



U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.


United States Bankruptcy Judge

Signed October 21, 2010

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

IN RE:

JAMES PRESTON GILES JR.
CINDY LOU GILES
DEBTORS

WELLS FARGO BANK, N. A.
MOVANT

VS

JAMES PRESTON GILES JR.
CINDY LOU GILES
AND WALTER O'CHESKEY, TRUSTEE
RESPONDENTS

§
§
§
§
§
§
§
§
§
§

CASE NO. 710-70302-HDH-13

CHAPTER 13

HEARING DATE: OCTOBER 20, 2010

HEARING TIME: 10:00 AM

AGREED ORDER MODIFYING STAY

The Court finds that Movant, Wells Fargo Bank, N. A. (hereinafter referred to as "Movant"), a secured creditor in this matter, has filed a Motion for Relief from Stay of Act Against Property ("Motion") concerning the real property located at 954 Cropper Rd, Burkburnett, Texas 76354 (the "Property"), and more particularly described in the deed of trust; that all required notices of the Motion and the hearing thereon have been properly served; and that the parties have agreed to modification of the 11 USC §362(a) stay with respect to the Property. Debtors have defaulted in the performance of certain obligations to Movant.

IT IS THEREFORE ORDERED THAT:

1. The 11 USC §362(a) stay as to Movant, its successors and/or assigns, in accordance with the parties' agreement, is hereby MODIFIED, and shall remain in effect provided Debtors comply with the following conditions:

- a. Debtors shall resume making all future monthly payments to Movant as they become due commencing November, 2010, each payment to be timely made in accordance with the terms and provisions of the loan documents between Wells Fargo Bank and Debtors. Payments should be paid to Wells Fargo Bank, N. A., One Home Campus / BK PMT PROC / MAC #X2302-04C, Des Moines, Iowa 50328.
- b. Debtors shall cure the post-petition arrearage currently due to Movant for the month(s) of August 2010 through and including October 2010 in the total amount of \$4,037.19, which includes post-petition attorneys' fees and costs incurred by Movant in bringing this Motion in the amount of \$675.00, by allowing Movant to file a Supplemental Proof of Claim in the amount of \$4,037.19, which is to be paid through the Chapter 13 Plan.
- c. Within 30 days of the entry of this order, Debtors shall complete the modification of their Chapter 13 Plan with respect to Movant to include provisions for payment of the sum of \$4,037.19, the post-petition arrearage claimed by Movant in its Proof of Claim.
- d. Debtors shall remain current on those payments arising under the terms of their Chapter 13 plan.

1. Movant may apply the payments received hereunder first to attorneys' fees and costs and then to the remainder of the arrearage due to Movant as set forth above.

2. Debtors' tendering of a check to Movant which is subsequently returned due to an insufficiency of funds in the account upon which the check is drawn shall not constitute a "payment" as that term is used in Paragraph 1 of this Order.

3. Debtors' subsequent modification of their Plan in response to a notice of default under this Order provided by Movant to Debtors shall not constitute the curing of default described in such notice of default.

4. In the event that Debtors fail to comply with any of the conditions set forth in Paragraph 1 of this Order, and upon Movant's providing to Debtors and Debtors' attorney written notice of the noncompliance, by first class and certified mail, and upon Debtors' failure to cure the noncompliance and pay an additional amount of

\$50.00 to reimburse Movant for the attorney fees and costs incurred in connection with the Notice of Default within eleven (11) days from the date of the written notice, the 11 USC §362(a) stay as to Movant, its successors and/or assigns, shall be terminated without notice or order of the Court, and Movant, its successors and/or assigns, shall be permitted to exercise any rights granted to it by the loan documents with respect to the Property including, but not limited to, the execution of a non-judicial foreclosure sale of the Property. Debtors' right to notice is expressly limited to two (2) events of noncompliance. Upon the third event of noncompliance, the 11 USC §362(a) stay as to Movant, its successors and/or assigns, shall be terminated without further notice or order, and Movant, its successors and/or assigns, shall be permitted to exercise its rights stated herein.

5. It is further ordered that Movant shall give the Trustee notice immediately upon foreclosure and that Movant shall amend or withdraw its claim herein within twenty (20) days after foreclosure.

6. In the event the Debtors convert to a Chapter 7 during the pendency of this bankruptcy case, the Debtors shall cure all arrearage due to Movant by the date of entry of the Order converting the case. Should the Debtors fail to timely cure said arrearage, Movant may abandon the terms of this agreement, and the 11 USC §362(a) stay, if any is in effect, shall terminate without further notice or order of the Court, and Movant, its successors and/or assigns, shall be free to exercise any rights granted to it by the loan documents with respect to the Property including, but not limited to, execution of a non-judicial foreclosure sale of the Property.

IT IS FURTHER ORDERED that the provisions of Bankruptcy Rule 4001(a)(3) are waived and the Order shall be in full force and effect upon signature of this Court.

END OF ORDER

7702-N-0544

AGREED TO AND APPROVED BY:

/s/Monte White
Monte J. White
Bar #
Monte J. White & Associates, P.c.
1106 Brook Avenue
Hamilton Place
Wichita Falls, TX 76301
(940) 723-0099
Attorney for Debtors

/s/James Giles Jr.
Debtor

/s/Marc McBeath
Walter O'Cheskey
6308 Iola Avenue
Lubbock, Texas 79424
Chapter 13 Trustee

/s/Michael Burns
Joe M. Lozano, Jr. / TBN 24005462
Cristina Platon Camarata / TBN 16061560
Michael J. Burns / TBN 24054447
Sammy P. Hooda / TBN 24064032
Brice, Vander Linden & Wernick, P.C.
9441 LBJ Freeway, Suite 350
Dallas, Texas 75243
(972) 643-6600 / (972) 643-6698 (Telecopier)
E-mail: bkcyattorneys@bkcyllaw.com
Attorney for Movant

7702-N-0544